IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CRIMINAL REVISION PETITION NO.585/2006.

Motilal Chandoliya
Vs.
State

Date of Order:- 2/8/2006.

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Mahesh Chand Gupta for the petitioner.
Mrs.Nirmala Sharma P.P. for the State.

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BY THE COURT:-

The instant Cr.Revision Petition under Section 397 r/w. 401 Cr.P.C. is directed against the order dated 5/6/2006 passed by the learned Special Judge (Sati Nivaran) & Additional Sessions Judge, Jaipur City, Jaipur in Criminal Appeal No.378/2006 whereby the judgment dated 22/3/2001 passed by the learned Civil Judge (Senior Division) & Additional Chief Judicial Magistrate No.4, Jaipur City, Jaipur in Criminal Case No.128/1995 convicting the petitioner for offences u/Ss.420 and 471 I.P.C. has been confirmed.

Briefly stated, the relevant facts giving rise to this revision petition and necessary for its disposal are that a report

Exh.P.20 was made by the complainant who happened to be the Senior Deputy District Education Officer, Jaipur at P.S. Bani Park, Jaipur alleging therein that an advertisement inviting applications for the post of Teacher Gr.III was issued and published for appointment on the said post in the year 1994. Accused-petitioner applied for the said post and he annexed mark-sheet of Higher Secondary Examination, 1987. At the time of interview when he was interrogated with regard to the mark-sheet filed by him, he fairly confessed before the interview board that the said mark-sheet annexed by him with his application form was forged one. An F.I.R. came to be lodged on the basis of the aforesaid report and after investigation charge-sheet was filed against the accused-petitioner for offences under Sections 420, 467, 468 and 471 I.P.C. but after due trial accused-petitioner was acquitted of the charges for offences under Sections 467 and 468 I.P.C. as there was no direct or circumstantial evidence to the effect that he had forged the mark sheet. However, he was convicted for the offences under Sections 420 and 471 IPC. He was sentenced as indicated above. The appeal filed by him was dismissed by

the learned Special Judge (Sati Nivaran) cum-Additional Sessions Judge, Jaipur City, Jaipur by the impugned-order dated 5/6/2006. Hence, this revision petition.

Learned counsel for the petitioner has contended that if forgery is not proved the allegation under Section 420 I.P.C. would also fail. He has referred to the authorities in the cases of *Guru Bipin Singh Vs. Sh.Chongtham Manihar Singh and Anr. : 1997 Cr.L.R. (SC) 16; Ramavtar Singh Vs. State of Raj. : 1992 RJCr.395; The State of Raj. Vs. Ganga S/o Shri Gokul Dangi : 1992 RJCr.399; Bhanwar Singh Vs. State of Rajasthan : 1995 Cr.L.R. (Raj.) 401* and the judgment passed in *S.B.Cr.Revision Petition No.331/1998 (Hukam Singh Vs. State of Rajasthan) decided on 7/5/1998*.

Learned Public Prosecutor has supported the judgment and order of the learned courts below.

I have considered the submissions made at the bar and have also perused the impugned-judgment as well as the relevant record and the case law referred to above.

It is pertinent to state at the outset that it is not in dispute that petitioner had

applied for the post of Teacher Gr.III in response to the advertisement published in the year 1994. His application is Exh.P.18. Exh.P.19 is the mark-sheet annexed by him with his application form.

From the statements of Ramesh Chand PW-1, Umesh Chand Gupta PW-2, Munshi PW-4, the application Exh.P.18, mark-sheet Exh.P.19 and interview letter Exh.P.21 it stands proved beyond all manner of doubt that the accused-petitioner has intentionally induced the concerned authorities by practising deception on them to call him for the interview and if he had not so deceived them, they would not have called him for interview and he has also dishonestly used as genuine mark-sheet of the Higher Secondary Examination, 1987 Exh.P./19 knowing it or having reason to believe it to be a forged document.

Awadh Behari PW-3 has categorically stated that he was the Section Officer in the examination section. Petitioner Motilal Chandoliya had passed Higher Secondary Examination by grace as he had secured 152 marks out of total marks of 400. His original mark sheet is Exh.P.1 and forged mark sheet is Exh.P.19 wherein he has shown having obtained

236 marks out of 400 marks. Suresh Kumar Mehrania PW-5 has conducted the investigation into this matter and has proved that the petitioner was arrested vide Exh.P.14 who made a discovery statement Exh.P.41. Pursuant thereto, original mark-sheet was recovered from his house vide Exh.P.42. Report of the F.S.L. is Exh.P.44 according to which the mark-sheet Exh.P.19 was a forged document.

Learned counsel for the petitioner has contended that there is no material to show that the original mark-sheet Exh.P.1 was with the petitioner at the time when he filled in the application form Exh.P.18 and annexed with it the mark-sheet Exh.P.19 but the petitioner has nowhere pleaded that the original mark-sheet was not with him at that time. The fact or suggestion to this effect has also been not made to the prosecution witnesses in their cross-examination. This contention of the learned counsel therefore, appears to be an after thought and cooked up. Since the original mark-sheet Exh.P.1 was recovered from his house which was in his possession, it can reasonably be inferred that he knew that the mark-sheet Exh.P.19 was forged one and he had filed that mark-sheet with the dishonest intention of

practising deception on the concerned authorities for obtaining service as Teacher Gr.III. He has thus dishonestly used the forged mark-sheet.

Learned courts below have, therefore, rightly held him guilty of the offences under Sections 420 and 471 I.P.C. and he has been rightly acquitted of the charges for offences under Sections 467 and 468 I.P.C. as there was no direct or circumstantial evidence to prove beyond reasonable doubt that mark-sheet Exh.P.19 was forged by him. There is also no appeal of the State against his acquittal on these charges.

So far as the abovementioned authorities are concerned, it may be stated that in the case of *Guru Bipin Singh (supra)* it has been held that where no case of forgery is made out and the principal allegation of forgery fails, the offence of cheating being a consequential offence cannot stand but the facts of that case are clearly distinguishable from the facts of the present case. In the above case, the offence of forgery as defined under Section 463/464 IPC was not made out whereas, in the instant case, it is proved beyond all manner of doubt that mark-sheet

Exh.P.19 was a forged document which the petitioner has dishonestly used.

In *Ramavtar Singh* (supra) the conviction of the accused petitioner for offence u/S.471 I.P.C. has been upheld despite acquittal of the accused-petitioner on charges for offences under Sections 467 and 468 I.P.C. and the cases of *The State of Raj. Vs. Ganga S/o Shri Gokul Dangi, Bhanwar Singh Vs. State of Rajasthan and the judgment passed in S.B.Cr.Revision Petition No.331/1998 (Hukam Singh Vs. State of Rajasthan) decided on 7/5/1998* deal with punishment and do not throw any light on the contention raised by the learned counsel for the petitioner.

Keeping in view the gravity of the offences proved against the petitioner, no reduction in the sentence imposed upon him by the learned courts below is called for, justified and warranted as per the law laid down by the Hon'ble Apex Court in this behalf.

In view of the foregoing discussion therefore, I do not find any error, illegality or impropriety in the impugned-judgments and find no cogent and valid reason to admit this revision petition.

Thus, this revision petition under Section 397 read with Section 401 Cr.P.C. not being fit for admission is dismissed and the concurrent judgments of the learned courts below are upheld.

(HARBANS LAL), J.

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